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OLYMPUS INSURANCE COMPANY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

OLYMPUS INSURANCE COMPANY,

Plaintiff,

vs.

CARA BARBER; OHANA MILITARY

CIVIL NO. CV 17-00254 HG-KJM  
(Declaratory Judgment)

PLAINTIFF OLYMPUS INSURANCE  
COMPANY'S MEMORANDUM IN  
RESPONSE TO DEFENDANT-  
INTERVENOR UNITED STATES  
SERVICES AUTOMOBILE  
ASSOCIATION'S MOTION TO

(continued on next page)

COMMUNITIES, LLC; FOREST CITY  
RESIDENTIAL MANAGEMENT,  
INC.,

Defendants.

INTERVENE, FILED MARCH 23,  
2018; CERTIFICATE OF SERVICE

Hearing Date: May 3, 2018

Time: 10:00 a.m.

Judge: Honorable Kenneth J. Mansfield

**PLAINTIFF OLYMPUS INSURANCE COMPANY'S MEMORANDUM IN  
RESPONSE TO DEFENDANT INTERVENOR UNITED STATES  
SERVICES AUTOMOBILE ASSOCIATION'S MOTION TO INTERVENE**

Plaintiff OLYMPUS INSURANCE COMPANY ("Olympus"), by and through its attorneys, Tom Petrus & Miller, LLC and Colodny Fass, submits this response to the Motion to Intervene which has been filed by United Services Automobile Association ("USAA").

The instant action is a claim for declaratory relief by Olympus which issued to Defendant CARA BARBER ("Barber") a policy of homeowners' insurance, Policy No. OL30151723 (the "Policy"), by which Olympus agreed to insure the real property located at 1885 Forest Glen Way, St. Augustine, FL 32092, and to provide liability insurance to Barber, subject to the terms, conditions and exclusions in the Policy. To the extent that USAA is also an insurer for Barber, USAA meets the criteria for intervention under FRCP 24(a) and/or 24(b), and Olympus has no objection to the proposed intervention.


However, the Memorandum in Support of Motion to Intervene contains mischaracterizations concerning the nature of the coverage provided by USAA.

The Olympus Policy which is the subject of this declaratory relief action was in effect from July 22, 2015 until September 2, 2016, at which time the Policy was cancelled by Barber. USAA states in its Memorandum that it issued a policy to Barber which is “excess” to the Olympus Policy. Based on information provided by USAA’s counsel, the USAA Umbrella Liability policy covers the policy period commencing September 2, 2016 to September 2, 2017, effectively beginning once the Barber’s cancelled their policy of insurance with Olympus. Since the Olympus Policy was not in effect as of the date USAA issued the Umbrella Liability policy, USAA’s policy cannot be excess to the Olympus Policy. Indeed, USAA has provided information that after Barber cancelled the Olympus policy, USAA itself issued the underlying homeowners policy to Barber in addition to the Umbrella Liability Policy for the period from September 2, 2016 to September 2, 2017.

Nevertheless, due to the ongoing nature of the internet publications at issue, USAA’s coverage is potentially implicated by allegations against Barber in the underlying matter, and as such, USAA is entitled to intervene in this declaratory relief action as a subsequent insurer for Barber. USAA is not excess to Olympus, and, as such, has no standing to assert that Olympus has somehow engaged in “bad faith” in connection with the Motion for Assignment of Similar Case which Olympus filed on August 9, 2017. (That Motion was granted over the objection of Barber). Accordingly, USAA’s alleged lack of good faith and fair dealing by

Olympus are not proper grounds for intervention by USAA, are irrelevant to the coverage concerns in this case, and USAA's arguments to that effect should be disregarded by the Court.

Dated: Honolulu, Hawaii, APR 06 2018.



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